

## **SUBCHAPTER I : FINANCIAL RESPONSIBILITY**

### **§331.141. Definitions.**

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise and are also used in the specifications for the financial test for plugging and abandonment. The definitions are intended to represent the common meanings of the terms as they are generally used by the business community:

Current closure cost estimate - The dollar amount of financial assurance currently approved by the commission to ensure the proper closing, plugging, and abandoning of injection operations.

Current liabilities - Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

Current plugging cost estimate - The most recent of the estimates prepared in accordance with §331.143(a),(b) and (c) of this title (relating to Cost Estimate for Plugging and Abandonment).

Parent corporation - A corporation which directly owns at least 50 percent of the voting stock of the corporation which is the injection well owner or operator; the latter corporation is deemed a subsidiary of the parent corporation.

Permittee - The owner and/or operator of injection well facilities authorized by rule or authorized by a valid commission permit.

Plugging and abandonment plan - The plan for plugging and abandonment prepared in accordance with the requirements of §331.46 of this title (relating to Wording of the Instruments).

Assets - All existing and all probable future economic benefits obtained or controlled by a particular entity.

Current assets - Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

Independently audited - An audit performed by an independent certified public accountant in accordance with generally accepted accounting principals.

Liabilities - Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

Net working capital - Current assets minus current liabilities.

Net worth - Total assets minus total liabilities and is equivalent to owner's equity.

Tangible net worth - The tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

#### **§331.142. Financial Responsibility.**

(a) The permittee shall secure and maintain a performance bond or other equivalent form of financial assurance or guarantee approved by the commission as identified in §331.144 of this title (relating to Financial Assurance for Plugging and Abandonment) to ensure the closing, plugging, abandonment, and post-closure care of the injection operation in the manner prescribed by the commission. The assurance may cover more than one well or operation. For new Class I and Class III injection wells, and Class I salt cavern disposal wells and associated salt caverns, financial security shall be provided at least 60 days prior to the commencement of drilling operations for the well. All assurance shall be effective before commencement of drilling operations. For converted wells and other previously constructed wells, financial security shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance.

(b) The requirement to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.

#### **§331.143 Cost Estimate for Plugging and Abandonment.**

(a) The owner or operator must prepare a written estimate, in current dollars, of the cost of plugging the injection well in accordance with the plugging and abandonment plan as specified in this Chapter. The plugging and abandonment cost estimate must equal the cost of plugging and abandonment at the point in the facility's operating life when the extent and manner of its operation would make plugging and abandonment the most expensive, as indicated by its plugging and abandonment plan.

(b) The owner or operator must adjust the plugging and abandonment cost estimate for inflation within 30 days after each anniversary of the date on which the first plugging and abandonment cost estimate was prepared. The adjustment must be made as specified in paragraphs (1) and (2) of this section, using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the

inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) The owner or operator must revise the plugging and abandonment cost estimate whenever a change in the plugging and abandonment plan increases the cost of plugging and abandonment. The revised plugging and abandonment cost estimate must be adjusted for inflation as specified in subsection (b) of this section.

(d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest plugging and abandonment cost estimate prepared in accordance with subsections (a) and (c) of this section and, when this estimate has been adjusted in accordance with subsection (b) of this section, the latest adjusted plugging and abandonment cost estimate.

(e) All financial assurance documents shall be filed with the executive director.

#### **§331.144. Financial Assurance for Plugging and Abandonment.**

An owner or operator of each facility must establish financial assurance for the plugging and abandonment of each existing and new Class I, Class III injection well, and Class I salt cavern disposal well and associated salt cavern. For new wells and/or salt caverns, financial security shall be provided at least 60 days prior to the commencement of drilling operations for the well. All assurance shall be effective before commencement of drilling operations. For converted wells and other previously constructed wells, financial security shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance. The owner or operator may choose from the options as specified in paragraphs (1)-(6) of this section.

##### **(1) Plugging and abandonment trust fund.**

(A) An owner or operator may satisfy the requirements of this section by establishing a plugging and abandonment trust fund which conforms to the requirements of this paragraph and by submitting an originally signed duplicate of the trust agreement to the executive director. An owner or operator of any of the previously referenced wells in this section must provide the originally signed duplicate of the trust agreement to the executive director at least 60 days prior to the commencement of drilling operations for the well. For converted wells and other previously constructed wells, the originally signed duplicate of the trust agreement must be provided to the executive director at least 30 days prior to permit issuance. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(B) The wording of the trust agreement must be identical to the wording specified in §331.147(a)(1) of this title (relating to Wording of the Instruments), and the trust agreement must be accompanied by a formal certification of acknowledgement (for example, see §331.147(a)(2)) of this title (relating to Wording of the Instruments). Schedule A of the trust

agreement must be updated within 60 days after a change in the amount of the current plugging and abandonment cost estimate covered by the agreement.

(C) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the injection well as estimated in the plugging and abandonment plan, whichever period is shorter, this period is hereafter referred to as the "pay-in period." The payments into the plugging and abandonment trust fund must be made as follows:

(i) For a new well, the first payment must be made before the commencement of drilling operations. A receipt from the trustee for this payment must be submitted by the owner or operator to the executive director before commencement of drilling operations. For converted wells and other previously constructed wells, the first payment must be made and a receipt from the trustee for this payment must be submitted by the owner or operator to the executive director before permit issuance. The first payment must be at least equal to the current plugging and abandonment cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula.

$$\frac{PE-CV}{Y}$$

$$\text{Next payment} = Y$$

where PE is the current plugging and abandonment cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(ii) If an owner or operator establishes a trust fund as specified in this paragraph, and the value of that trust fund is less than the current plugging and abandonment cost estimate when a permit is awarded for the injection well, the amount of the current plugging and abandonment cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in this subparagraph. Payment must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to Part 331 of this chapter. The amount of each payment must be determined by this formula:

$$\frac{PE-CV}{Y}$$

$$\text{Next payment} = Y$$

where PE is the current plugging and abandonment cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(D) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current plugging and abandonment cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subparagraph (C) of this paragraph.

(E) If the owner or operator establishes a plugging and abandonment trust fund after having used one or more alternate mechanisms specified in this section, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph.

(F) After the pay-in period is completed, whenever the current plugging and abandonment cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current plugging and abandonment cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(G) If the value of the trust fund is greater than the total amount of the current plugging and abandonment cost estimate, the owner or operator may submit a written request to the executive director for release of the amount in excess of the current plugging and abandonment cost estimate.

(H) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the executive director for release of the amount in excess of the current plugging and abandonment cost estimate covered by the trust fund.

(I) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subparagraphs (G) or (H) of this paragraph, the executive director may instruct the trustee to release to the owner or operator such funds as the executive director specifies in writing.

(J) After beginning final plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for plugging and abandonment activities, the executive director will determine whether the plugging and abandonment expenditures are in accordance with the plugging and abandonment plan or otherwise justified, and if so, he will instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of plugging and abandonment will be significantly greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (9) of this section, that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment.

(K) The executive director will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The executive director releases the owner or operator from the

requirements of this section in accordance with paragraph (9) of this section.

(2) Surety bond guaranteeing payment into a plugging and abandonment trust fund.

(A) An owner or operator must satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the executive director with the application for a permit or for approval to operate under rule. The bond must be provided at least 60 days before the commencement of drilling of a new well. The bond must be effective before commencement of drilling operations. For converted wells and other previously constructed wells, the bond shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance. The bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of Treasury.

(B) The wording of the surety bond must be identical to the wording in §331.147(b) of this title (relating to Wording of the Instruments).

(C) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund must meet the requirements specified in paragraph (1) of this section, except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the executive director with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these requirements:

(I) Payments into the trust fund as specified in paragraph (1) of this section;

(II) Updating of Schedule A of the trust agreement (see §331.147(a) of this title (relating to Wording of the Instruments) to show current plugging and abandonment cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

(D) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before beginning of plugging and abandonment of the injection well; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin plugging and abandonment is issued by the executive director or

a U. S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(E) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(F) The penal sum of the bond must be in amount at least equal to the current plugging and abandonment cost estimate, except as provided in paragraph (7) of this section.

(G) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current plugging and abandonment cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the penal sum may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.

(H) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during 120 days beginning on the date of the receipt of the notice of cancellation by both owner or operator and the Executive Director as evidenced by the returned receipts.

(I) The owner or operator may cancel the bond if the executive director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(3) Surety bond guaranteeing performance of plugging and abandonment.

(A) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and by submitting the bond to the executive director. An owner or operator of a new facility must submit the bond to the executive director with the permit application or for approval to operate under rule. The bond must be provided at least 60 days before commencement of the drilling of a new well. The bond must be effective before commencement of drilling operations. For converted wells and other previously constructed wells, the bond shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of the Treasury.

(B) The wording of the surety bond must be identical to the wording specified in §331.147(c) of this title (relating to Wording of the Instruments).

(C) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the executive director. The standby trust must meet the requirements specified in paragraph (1) of this section, except that:

(i) An original signed duplicate of the trust agreement must be submitted to the executive director with the surety bond; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(I) Payments into the trust fund as specified in paragraph (1) of this section;

(II) Updating of Schedule A of the trust agreement (see §331.147(a) if this title (relating to Wording of the Instruments)) to show current plugging and abandonment cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

(D) The bond must guarantee that the owner or operator will:

(i) Perform plugging and abandonment in accordance with the plugging and abandonment plan and other requirements of the permit for the injection well whenever required to do so; or

(ii) Provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(E) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination that the owner or operator has failed to perform plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements when required to do so, under terms of the bond the surety will perform plugging and abandonment as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

(F) The penal sum of the bond must be in an amount at least equal to the current plugging and abandonment cost estimate.

(G) Whenever the current plugging and abandonment cost estimate increases



to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current plugging and abandonment cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section. Whenever the plugging and abandonment cost estimate decreases, the penal sum may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.

(H) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

(I) The owner or operator may cancel the bond if the executive director has given prior written consent. The executive director will provide such written consent when:

(i) An owner or operator substitute alternate financial assurance as specified in this section; or

(ii) The executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(J) The surety will not be liable for deficiencies in the performance of plugging and abandonment by the owner or operator after the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(4) Plugging and abandonment letter of credit.

(A) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by submitting the letter to the executive director. An owner or operator of an injection well must submit the letter of credit to the executive director during submission of the permit application or for approval to operate under rule. The letter of credit must be provided at least 60 days before the commencement of drilling of a new well. The letter of credit must be effective before commencement of drilling operations. For converted wells and other previously constructed wells, the letter of credit shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(B) The wording of the letter of credit must be identical to the wording specified in §331.147(d) of this title (relating to Wording of the Instruments).

(C) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the executive director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Executive Director. This

standby trust fund must meet the requirements of the trust fund specified in paragraph (1) of this section, except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the executive director with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of this sections, the following are not required by these regulations:

(I) Payments into the trust fund as specified in paragraph (1) of this section;

(II) Updating of Schedule A of the trust agreement (see §331.147(a) of this title (relating to Wording of the Instruments) to show current plugging and abandonment cost estimates;

(III) Annual valuations as required by the trust agreement; and

(IV) Notices of nonpayment as required by the trust agreement.

(D) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for plugging and abandonment of the well by the letter of credit.

(E) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the executive director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts.

(F) The letter of credit must be issued in an amount at least equal to the current plugging and abandonment cost estimate, except as provided in paragraph (7) of this section.

(G) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the amount of credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current plugging and abandonment cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the amount of the credit may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.

(H) Following a determination that the owner or operator has failed to perform final plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements when required to do so, the executive director may draw on the letter of credit.

(I) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the executive director will draw on the letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the executive director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the executive director.

(J) The executive director will return the letter of credit to the issuing institution for termination when:

(i) an owner or operator substitutes and receives approval from the executive director of the commission for alternate financial assurance as specified in this section; or

(ii) The executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(5) Plugging and abandonment insurance.

(A) An owner or operator may satisfy the requirements of this section by obtaining plugging and abandonment insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the executive director. An owner or operator of a new injection well must submit the certificate of insurance to the executive director with the permit application or for approval to operate under rule. The insurance must be provided at least 60 days before the commencement of drilling of a new well. The insurance must be effective before commencement of drilling operations. For converted wells and other previously constructed wells, the insurance shall be provided at least 30 days prior to permit issuance and be effective upon permit issuance. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(B) The wording of the certificate of insurance must be identical to the wording specified in §331.147(e) of this title (relating to Wording of the Instruments).

(C) The plugging and abandonment insurance policy must be issued for a face amount at least equal to the current plugging and abandonment estimate, except as provided in paragraph (7) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurers future liability will be lowered by the amount of the payments.

(D) The plugging and abandonment insurance policy must guarantee that funds

will be available whenever final plugging and abandonment occurs. The policy must also guarantee that once plugging and abandonment begins, the issuer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(E) After beginning plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for plugging and abandonment activities, the executive director will determine whether the plugging and abandonment expenditures are in accordance with the plugging and abandonment plan or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of plugging and abandonment will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (9) of this section, that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment of the injection well.

(F) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator as specified in subparagraph (J) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation will be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(G) Each policy must contain provisions allowing assignment to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(H) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return of receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (i) The executive director deems the injection well abandoned; or
- (ii) The permit is terminated or revoked or a new permit is denied; or
- (iii) Plugging and abandonment is ordered by the executive director or a United States district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(v) The premium due is paid.

(I) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current plugging and abandonment estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the face amount may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.

(J) The executive director will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(6) Financial test and corporate guarantee for plugging and abandonment.

(A) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either clause (i) or (ii) of this subparagraph:

(i) The owner or operator must have:

(I) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) Net working capital and tangible net worth each at least six times the sum of the current plugging and abandonment cost estimate; and

(III) Tangible net worth of at least \$10 million; and

(IV) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current plugging and abandonment cost estimate.

(ii) The owner or operator must have:

(I) A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(II) Tangible net worth at least six times the sum of the current plugging and abandonment cost estimate; and

(III) Tangible net worth of at least \$10 million; and

(IV) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current plugging and abandonment cost estimates.

(B) The phrase "current plugging and abandonment cost estimate" as used in paragraph (A) of this paragraph refers to the cost estimate required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer §331.147(f) of this title (relating to Wording of the Instruments).

(C) To demonstrate that he meets this test, the owner or operator must submit the following items to the executive director.

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in §331.147(f) of this title (relating to Wording of the Instruments); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(D) An owner or operator of a new injection well must submit the items specified in subparagraph (C) of this paragraph to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subparagraph (C) of this paragraph.

(E) After the initial submission of items specified in subparagraph (C) of this paragraph, the owner or operator must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subparagraph (C) of this paragraph.

(F) If the owner or operator no longer meets the requirements of subparagraph (A) of this paragraph, he must send notice to the executive director of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(G) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph (A) of this paragraph, require reports of financial condition at any time from the owner or operator in addition to those specified in subparagraph (C) of this paragraph. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subparagraph (A) of this paragraph, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(H) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subparagraph (C)(ii) of this paragraph). An adverse opinion or disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(I) The owner or operator is no longer required to submit the items specified in subparagraph (C) of this paragraph when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(J) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantee must be the parent corporation of the owner or operator. The guarantee must meet the requirements for owners or operators in subparagraphs (A)-(H) of this paragraph and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in §331.147(g) of this title (relating to Wording of the Instruments). The corporate guarantee must accompany the items sent to the executive director as specified in subparagraph (C) of this paragraph. The terms of the corporate guarantee must provide that:

(i) If the owner or operator fails to perform plugging and abandonment of the injection well covered by the corporate guarantee in accordance with the plugging and abandonment plan and other permit requirements whenever required to do so, the guarantee will do so or establish a trust fund as specified in paragraph (1) of this section in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the executive director, as evidenced by the return receipts. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the Executive Director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(7) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per injection well. These mechanisms are limited to trust funds, surety bonds, guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (1), (2), (4), and (5), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the adjusted plugging and abandonment cost. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use that trust fund as the standby trust fund for the other mechanisms. A single standby trust may be established for two or more mechanisms. The executive director may invoke any or all of the mechanisms to provide for plugging and abandonment of the injection well.

(8) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one injection well. Evidence of financial assurance submitted to the executive director must include a list showing, for each injection well, the EPA Identification Number, name, address, and the amount of funds for plugging and abandonment assured by the mechanism. If the injection wells covered by the mechanism are in more than once EPA region, identical evidence of financial assurance must be submitted to the executive director. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each injection well. In directing funds available through the mechanism for plugging and abandonment of any of the injection wells covered by the mechanism, the executive director may direct only the amount of funds designated for that injection well, unless the owner or operator agrees to use additional funds available under the mechanism.

(9) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that plugging and abandonment has been accomplished in accordance with the plugging and abandonment plan, the executive director will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for plugging and abandonment of the injection well, unless the executive director has reason to believe that plugging and abandonment has not been in accordance with the plugging and abandonment plan.

**§331.145 Incapacity of Owners or Operators, Guarantors, or Financial Institutions.**



(a) An owner or operator must notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the owner or operator as debtor, within 10 business days after the commencement of the proceeding. A guarantor of a corporate guarantee as specified in §331.147(g) of this title (relating to Financial Assurance for Plugging and Abandonment) must make such a notification if he is named as debtor, as required under the terms of the guarantee (see §331.147(g) of this title (relating to Wording of the Instruments)).

(b) An owner or operator who fulfills the requirements of §331.144 of this title (relating to Financial Assurance for Plugging and Abandonment) by obtaining a letter of credit, surety bond, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

#### **§331.146. State Assumption of Responsibility.**

(a) If the state either assumes legal responsibility for an owner's or operator's compliance with the plugging and abandonment requirements of these regulations or assures that funds will be available from state sources to cover these requirements, the owner or operator will be in compliance with the requirements of this section if the executive director determines that the state's assumption of responsibility is at least equivalent to the mechanisms specified in this section. The executive director will evaluate the equivalency of state guarantees mainly in terms of: certainty of the availability of funds for the required plugging and abandonment coverage; and the amount of funds that will be made available. The executive director may also consider other factors. The owner or operator must submit to the executive director a letter from the state describing the nature of the state's assumption of responsibility together with a letter from the owner or operator requesting that the state's assumption of responsibility be considered acceptable for meeting the requirements of this section. The letter from the state must include, or have attached to it, the following information: the facility's EPA Identification Number, name and address, and the amounts of funds for plugging and abandonment coverage that are guaranteed by the state. The executive director will notify the owner or operator of his determination regarding the acceptability of the state's guarantee in lieu of mechanisms specified in this section. The executive director may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with §331.144 (relating to Financial Assurance for Plugging and Abandonment).

(b) If the state's assumption of responsibility is found acceptable as specified in subsection (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this section by use of both the state's assurance and additional financial mechanisms as specified in this section. The amount of funds available through the state and federal mechanisms must at least equal the amount required by this section.

#### **§331.147. Wording of the Instruments.**

(a) A trust agreement for a trust fund, as specified in §331.144(1) of this title (relating to Financial Assurance for Plugging and Abandonment), must be worded as follows, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted:

#### TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of \_\_\_\_\_" or "a national bank"], the "Trustee."

Whereas, the Texas Water Commission, "TWC," an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an injection well shall provide assurance that funds will be available when needed for plugging and abandonment of the injection well,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

##### Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any "underground injection well" or any other facility or activity that is subject to regulation under the Underground Injection Control Program.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current plugging and abandonment cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TWC. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this

Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TWC.

Section 4. Payment for Plugging and Abandonment. The Trustee shall make payments from the Fund as the Executive Director shall direct, in writing, to provide for the payment of the costs of plugging and abandonment of the injection wells covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Executive Director from the Fund for plugging and abandonment expenditures in such amounts as the Executive Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Executive Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company

Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate Executive Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Executive Director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to

matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Executive Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Executive Director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TWC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TWC, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the appropriate Executive Director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate Executive Director, or by the Trustee and the appropriate Executive Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this

Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Executive Director, or by the Trustee and the Executive Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Executive Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 31 Texas Administrative Code §331.147(a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]

By [Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

By

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgment which must

accompany the trust agreement for a trust fund as specified in §331.144(1) of this title (relating to Financial Assurance for Plugging and Abandonment). State requirements may differ on the proper content of this acknowledgment.

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in §331.144 (2) of this title (relating to Financial Assurance for Plugging and Abandonment) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### FINANCIAL GUARANTEE BOND

Dated bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator].

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"].

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)].

EPA Identification Number, name, address, and plugging and abandonment amount(s) for each facility guaranteed by this bond

[indicate plugging and abandonment amounts separately]: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Texas Water Commission (hereinafter called TWC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns

jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Underground Injection Control Regulation (UIC), to have a permit or comply with requirements to operate under rule in order to own or operate each injection well identified above, and

Whereas said Principal is required to provide financial assurance for plugging and abandonment as a condition of the permit or provisions to operate under rule, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used provide such financial assurance;

Now, therefore, the condition of the obligation are such that if the Principal shall faithfully, before the beginning of plugging and abandonment of each injection well identified above, fund the standby trust fund in the amount(s) identified above for the injection well,

Or if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin plugging and abandonment is issued by an Executive Director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Subchapter I of 31 Texas Administrative Code Chapter 331, as applicable, and obtain the Executive Director's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the Executive Director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an Executive Director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the injection well(s) into the standby trust funds as directed by the Executive Director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Executive Director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Executive Director(s), as evidenced by the return receipts.



The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Executive Director(s) of the Region(s) in which the bonded facility(ies) is (are) located.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new plugging and abandonment amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Executive Director(s).

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The person whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 31 Texas Administrative Code §331.147(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

Corporate Surety(ies)

[Name and address]  
State of incorporation: \_\_\_\_\_.  
Liability limit: \$\_\_\_\_\_.

[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$\_\_\_\_\_.

(c) A surety bond guaranteeing performance of plugging and abandonment, as specified in 31 Texas Administrative Code §331.144(3) of this title (relating to Financial Assurance for Plugging and Abandonment), must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:\_\_\_\_\_.

Effective date:\_\_\_\_\_.

Principal: [legal name and business address of owner or operator].

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"].

State of incorporation:\_\_\_\_\_.

Surety(ies): [name(s) and business address(es)]

\_\_\_\_\_

EPA Identification Number, name, address, and plugging and abandonment amounts(s) for each injection well guaranteed by this bond [indicate plugging and abandonment amounts for each well]:

\_\_\_\_\_

Total penal sum of bond: \$\_\_\_\_\_.

Surety's bond number:\_\_\_\_\_.

Know All Persons By These Presents.

That We, the Principal and Surety(ies) hereto are firmly bound to the Texas Water Commission [hereinafter called TWC], in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Underground Injection Control Regulations, as amended, to have a permit or comply with provisions to operate under rule for each injection well identified above, and

Whereas said Principal is required to provide financial assurance for plugging and abandonment as a condition of the permit or approval to operate under rule, and

Whereas said Principal shall establish a standby trust fund as required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform plugging and abandonment, whenever required to do so, of each injection well for which this bond guarantees plugging and abandonment, in accordance with the plugging and abandonment plan

and other requirements of the permit or provisions for operating under rule and other requirements of the permit or provisions for operating under rule as may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in Subchapter I of 31 Texas Administrative Code Chapter 331, and obtain the Executive Director's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the Executive Director(s) from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an Executive Director that the Principal has been found in violation of the plugging and abandonment requirements of Subchapter I of 31 Texas Administrative Code Chapter 331, for an injection well which this bond guarantees performances of plugging and abandonment, the Surety(ies) shall either perform plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements or provisions for operating under rule and other requirements or place the amount for plugging and abandonment into a standby trust fund as directed by the Executive Director.

Upon notification by an Executive Director that the Principal has failed to provide alternate financial assurance as specified in Subchapter I of 31 Texas Administrative Code Chapter 331, and obtain written approval of such assurance from the Executive Director(s) during the 90 days following receipt by both the Principal and the Executive Director(s) of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the injection well(s) into the standby trust fund as directed by the Executive Director.

The surety(ies) hereby waive(s) notification of amendments to plugging and abandonment plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice by certified mail to the owner and operator and to the Executive Director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Executive Director, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Executive Director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new plugging and abandonment amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Executive Director.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording on this surety bond is identical to the wording specified in 31 Texas Administrative Code §331.147(c) as such regulation was constituted on the date this bond was executed.

Principal.

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

[Corporate Surety(ies)]

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$\_\_\_\_\_.

[Signature(s)]

[name(s) and title(s)]

Corporate seal:

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$\_\_\_\_\_.

(d) A letter of credit, as specified in §331.144(d) of this title (relating to Financial Assurance for Plugging and Abandonment), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### IRREVOCABLE STANDBY LETTER OF CREDIT

Executive Director  
Texas Water Commission

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$\_\_\_\_\_, available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit No. \_\_\_\_\_, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Safe Drinking Water Act."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 31 Texas Administrative Code §331.147(d) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]  
[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A certificate of insurance, as specified in 31 Texas Administrative Code §331.144(5) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### CERTIFICATE OF INSURANCE FOR PLUGGING AND ABANDONMENT

Name and Address of Insurer (herein called the "insurer"):

---

Name and Address of Insured (herein called the "insured"):

---

Injection Wells covered: [list for each well: The EPA Identification Number, name, address, and the amount of insurance for plugging and abandonment (these amounts for all injection wells

covered must total the face amount shown below).]

Face Amount: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for plugging and abandonment for the injection wells identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 31 Texas Administrative Code §331.144(5), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Executive Director of the Texas Water Commission ("TWC"), the Insurer agrees to furnish to the Executive Director(s) a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 31 Texas Administrative Code §331.147(e) as such regulations were constituted on the date shown immediately below.

[Authorized signature of Insurer]

[Name of person signing]

[Title of person signing]

[Signature of witness or notary:]

\_\_\_\_\_

[Date]

(f) A letter from the chief financial officer, as specified in §331.144(6) of this title (relating to Financial Assurance for Plugging and Abandonment), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

[Address to Executive Director]

I am the chief financial officer of [name and address of firm.] This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Subchapter I of 31 Texas Administrative Code Chapter 331.

[Fill out the following four paragraphs regarding injection wells and associated cost estimates. If your firm has no injection wells that belong in a particular paragraph, write "None" in the space indicated. For each injection well, include its EPA Identification Number, name, address, and current plugging and abandonment cost estimate.]

1. This firm is the owner or operator of the following injection wells for which financial assurance for plugging and abandonment is demonstrated through the financial test specified in Subchapter I of 31 Texas Administrative Code Chapter 331. The current plugging and abandonment cost estimate covered by the test is shown for each injection well: \_\_\_\_\_.

2. This firm guarantees, through the corporate guarantee specified in Subchapter I of 31 Texas Administrative Code Chapter 331, the plugging and abandonment of the following injection wells owned or operated by subsidiaries of this firm. The current cost estimate for plugging and abandonment so guaranteed is shown for each injection well: \_\_\_\_\_.

3. In States where TWC is not administering the financial requirements of Subchapter I of 31 Texas Administrative Code Chapter 331, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the plugging and abandonment of the following injection wells through the use of a test equivalent or substantially equivalent to the financial test specified in Subchapter I of 31 Texas Administrative Code Chapter 331. The current plugging and abandonment cost estimate covered by such a test is shown for each injection well: \_\_\_\_\_.

4. This firm is the owner or operator of the following injection wells for which financial assurance for plugging and abandonment is not demonstrated either to TWC or a State through the financial test or any other financial assurance mechanism specified in Subchapter I of 31 Texas Administrative Code Chapter 331 or equivalent or substantially equivalent State mechanisms.

The current plugging and abandonment cost estimate not covered by such financial assurance is shown for each injection well: \_\_\_\_\_.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (6)(A)(i) of §331.144 of this title (relating to Financial Assurance for Plugging and Abandonment) are used. Fill in Alternative II if the criteria of paragraph (6)(A)(ii) of §331.144 of this title (relating to Financial Assurance for Plugging and Abandonment) are used.]

#### ALTERNATIVE 1

1. (a) Current plugging and abandonment cost \$ \_\_\_\_\_

(b) Sum of the company's financial responsibilities under 31 Texas Administrative Code Chapter 335, Subchapters E and F, currently met using the financial test or corporate guarantee \$ \_\_\_\_\_

(c) Total of lines a and b \$ \_\_\_\_\_

- \*2. Total liabilities [if any portion of the plugging and abandonment cost is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] \$\_\_\_\_\_
- \*3. Tangible net worth \$\_\_\_\_\_
- \*4. Net Worth \$\_\_\_\_\_
- \*5. Current assets \$\_\_\_\_\_
- \*6. Current liabilities \$\_\_\_\_\_
- \*7. Net working capital [line 5 minus line 6] \$\_\_\_\_\_
- \*8. The sum of net income plus depreciation, depletion and amortization \$\_\_\_\_\_
- \*9. Total assets in U. S. (required only if less than 90% of firm's assets are located in U.S.) \$\_\_\_\_\_
10. Is line 3 at least \$10 million? yes/no
11. Is line 3 at least 6 times line 1(c)? yes/no
12. Is line 7 at least 6 times line 1(c)? yes/no
- \*13. Are at least 90% of firm's assets located in the U.S.? yes/no  
If not, complete line 14.
14. Is line 9 at least 6 times line 1(c)? yes/no
15. Is line 2 divided by line 4 less than 2.0? yes/no
16. Is line 8 divided by line 2 greater than 0.1? yes/no
17. Is line 5 divided by line 6 greater than 1.5? yes/no

ALTERNATIVE II

1. (A) Current plugging and abandonment cost \$\_\_\_\_\_
- (b) Sum of the company's financial responsibilities under 31 Texas Administrative Code Chapter 335, Subchapters E and F, currently met using the financial test or corporate guarantee (c) Total of lines a and b \$\_\_\_\_\_
2. Current bond rating of most recent issuance of this firm and name of rating service \$\_\_\_\_\_



3. Date of issuance of bond \$\_\_\_\_\_
4. Date of maturity of bond \$\_\_\_\_\_
- \*5. Tangible net worth [if any portion of the plugging and abandonment cost estimate is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$\_\_\_\_\_
- \*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.) \$\_\_\_\_\_
7. Is line 5 at least \$10 million? yes/no
8. Is line 5 at least 6 times line 1(c)? yes/no
- \*9. Are at least 90% of the firm's assets located in the U.S.? If not, complete line 10 yes/no
10. Is line 6 at least 6 times line 1(c)? yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 31 Texas Administrative Code §331.146(f) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(g) A corporate guarantee as specified in §331.144(6) of this title (relating to Financial Assurance for Plugging and Abandonment) must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the bracketed material deleted:

#### GUARANTEE FOR PLUGGING AND ABANDONMENT

Guarantee made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by [name of guaranteeing entity], a business corporation organized under the laws of the State of \_\_\_\_\_, herein referred to as guarantor, to the Texas Water Commission (TWC), obligee, on behalf of our subsidiary [owner or operator] of [business address].

#### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 31 Texas Administrative Code §331.144(6).

2. [Owner or operator] owns or operates the following Class I hazardous waste injection well covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Plugging and abandonment plan" as used below refers to the plans maintained as required by Subchapter I of 31 Texas Administrative Code Chapter 331 for the plugging and abandonment of injection wells as identified above.

4. For value received from [owner or operator], guarantor guarantees to TWC that in the event that [owner or operator] fails to perform ["plugging and abandonment"] of the above facility(ies) in accordance with the plugging and abandonment plan and other requirements when required to do so, the guarantor will do so or fund a trust fund as specified in 31 Texas Administrative Code §331.144 in the name of [owner or operator] in the amount of the adjusted plugging and abandonment cost estimates prepared as specified in 31 Texas Administrative Code §331.143.

5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor will send within 90 days, by certified mail, notice to the Executive Director(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in 31 Texas Administrative Code §331.144 in the name of [owner or operator]. Within 30 days after sending such notice, the guarantor will establish such financial assurance if [owner or operator] has not done so.

6. The guarantor agrees to notify the Executive Director, by certified mail, of a voluntary or involuntary case under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement.

7. Guarantor agrees that within 30 days after being notified by the Executive Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of plugging and abandonment, he will establish alternate financial assurance, as specified in 31 Texas Administrative Code §331.144, in the name of [owner or operator] if [owner or operator] has not done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the plugging and abandonment plan, the extension or reduction of the time of performance of plugging and abandonment or any other modification or alteration of an obligation of [owner or operator] pursuant to 31 Texas Administrative Code Chapter 331.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of 31 Texas Administrative Code Chapter 331 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the Executive Director in which the facility(ies) is (are) located and to [owner or operator], such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both TWC and [owner or operator] as evidenced by the return receipts.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance

and obtain written approval of such assurance from the Executive Director within 90 days after a notice of cancellation by the guarantor is received by both the Executive Director and [owner or operator], guarantor will provide alternate financial assurance as specified in 31 Texas Administrative Code §331.144 in the name of the [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Water Commission or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the plugging and abandonment plan.

I hereby certify that the wording of this guarantee is identical to the wording specified in 31 Texas Administrative Code §331.147(g).

Effective date:\_\_\_\_\_.

[Name of guarantor]

[Authorized signature for guarantor]

[Type name of person signing]

[Title of person signing]

Signature of witness or notary:\_\_\_\_\_

Amendments to: §§331.142, 331.143, 331.144

Date Adopted: December 7, 1994

Date Filed with the Secretary of State: December 12, 1994

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